

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 231

BY SENATORS TARR, ROMANO, LINDSAY, BALDWIN,

PLYMALE, JEFFRIES, STOLLINGS, AND WOELFEL

[Passed March 12, 2022; in effect 90 days from passage]

1 AN ACT to amend and reenact §31G-4-1 of the Code of West Virginia, 1931, as amended; and
2 to amend said code by adding thereto a new section, designated §31G-4-7, all relating to
3 broadband connectivity; defining terms; requiring engineering reports on available
4 telecommunication cable space; providing for shared costs for the report; requiring notice
5 from pole owner or manager to telecommunication carriers of available space; requiring
6 notice to pole owner or manager of intent to use any available space; and exempting pole
7 owners which have electronic permitting and notification software system for processing
8 pole attachment applications.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. MAKE-READY POLE ACCESS.

§31G-4-1. Definitions.

1 As used in this article, the following terms are defined as follows:

2 (1) "Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical
3 codes adopted by a recognized national code organization, including, but not limited to, the
4 National Electrical Safety Code, or any local amendments to those codes: *Provided*, That
5 notwithstanding any other provisions of said applicable codes, the Code of West Virginia, or the
6 West Virginia Code of State Rules, variances for the installation and maintenance of broadband
7 service infrastructure on utility poles shall be permitted if these are agreed upon between
8 infrastructure owners.

9 (2) "Attacher" means any person, corporation, or other entity, or the agents or contractors
10 of such seeking to permanently or temporarily fasten or affix any type of equipment, antenna, line,
11 or facility of any kind to a utility pole in the right of way or its adjacent ground space.

12 (3) "Attachment application" means the application made by an attacher to a pole owner
13 for attachment of equipment, antenna, line, or facility of any kind to a utility pole. It shall include:

14 (A) Proof of insurance; or

15 (B) An indemnification agreement prepared by the pole owner.

16 (4) "Broadband service" means the same as that term is defined in §31G-1-2 of this code.

17 (5) "Commission" means the Public Service Commission as set forth in §24-1-1 *et seq.* of
18 this code.

19 (6) "Make-ready-costs" means the costs incurred by an attacher associated with the
20 transfer of the facilities, antenna, lines, or equipment of a pre-existing third-party user, undertaken
21 by an attacher to enable attachment to the utility pole or similar structure. Make-Ready Costs that
22 are to be paid by an attacher include, without limitation, all costs and expenses to relocate or alter
23 the attachments or facilities of any pre-existing third-party user as may be necessary to
24 accommodate an attacher's attachment.

25 (7) "Telecommunications carrier" means either:

26 (A) A telecommunication carrier as determined by the Department of Economic
27 Development; or

28 (B) A telecommunication carrier that meets the definition of such with respect to the
29 Federal Communication Commission, as set forth in 47 U.S.C. § 153.

30 (8) "Pole owner" means a person, corporation, or entity having ownership of a pole or
31 similar structure in the right of way to which utilities, including without limitation, electric and
32 communications facilities, are located or may be located whether such ownership is in fee simple
33 or by franchise.

34 (9) "Pre-existing third-party user" means the owner of any currently operating facilities,
35 antenna, lines, or equipment on a pole or its adjacent ground space in the right of way.

36 (10) "Utility facility" means the same as that term is defined in §17-2A-17a of this code.

37 (11) "Utility poles" or "poles" means poles that are used to support electrical, cable
38 television, telephone, and broadband service.

39 (12) "Wireless access" means access to and use of a right-of-way for the purpose of
40 constructing, installing, maintaining, using, or operating telecommunications facilities for wireless
41 communication purposes.

§31G-4-7. Ready pole access notification and cost sharing.

1 A pole owner or manager which has determined a utility pole ready for telecommunication
2 fibers to be added, and the additional available capacity for that pole, is required to make such
3 known to the West Virginia Department of Economic Development. Telecommunication carriers
4 will be notified by the West Virginia Department of Economic Development within 15 days of the
5 available space and the telecommunication carrier who intends to use the pole will share in the
6 cost of the engineering work required. The telecommunication carrier shall be given 30 days to
7 notify the pole owner or manager they will use the pole or poles for connectivity. The pole owner
8 will be excluded from the requirements of this paragraph if the pole owner has an electronic
9 permitting and notification software system for processing pole attachment applications.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2022.

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Governor